

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of HJF, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARTIN ARNOLD,

Respondent-Appellant,

and

TAMMIE FRANCES FLEMING,

Respondent.

UNPUBLISHED

May 27, 2003

No. 243210

Wayne Circuit Court

Family Division

LC No. 01-398173

Before: Whitbeck, C.J., and White and Donofrio, JJ.

PER CURIAM.

Respondent Martin Arnold appeals as of right the trial court's order terminating his parental rights to the minor child HJF pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).¹ We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

HJF came to the attention of petitioner Family Independence Agency (FIA) when she tested positive for cocaine at birth. At a preliminary hearing held in April of 2001, Tammie Fleming, the child's mother, stated that Arnold was the child's father, but that he had not established paternity and did not visit her in the hospital when the child was born.

¹ The trial court's order also terminated the parental rights of respondent Tammie Frances Fleming, the mother of HJF. Fleming has not appealed the order.

The trial court held a pretrial hearing in April of 2001. Arnold did not attend the hearing. Fleming stated that Arnold did not visit or support the child. The trial court held dispositional review hearings in May, August, and November of 2001 and in January of 2002. Once again, Arnold did not attend the hearings. During the May hearing, a children's services intake specialist testified that Arnold had not established paternity or come forward to plan for the child. The witness stated that if Arnold came forward and established paternity, she would develop a parent-agency agreement for him.

At a pretrial hearing held in March of 2002, Polly Wilson, a foster care worker, stated that she sent letters to Arnold at his mother's address. Wilson indicated that Fleming told her that Arnold had received the letters. The trial court found that reasonable efforts had been made to contact Arnold. In addition, the trial court authorized the notification of Arnold by publication of the date for the permanent custody hearing.

Arnold appeared at the permanent custody hearing in May of 2002 and acknowledged paternity of HJF. The trial court appointed counsel for Arnold and adjourned the proceedings to allow him to confer with counsel. The permanent custody hearing continued in July of 2002. Arnold was incarcerated and participated by speakerphone. Arnold testified that he was serving a prison sentence of nine months to ten years for breaking and entering a building, MCL 750.110, and that his earliest possible release date was November of 2002. Arnold indicated that he had a prior conviction for selling marijuana and that he was sentenced to probation on that occasion. He stated that he had never seen HJF because he had been imprisoned for her entire life. He stated that when he was released from prison he wanted to secure employment and return to school and that he planned to live with his mother upon his release. He indicated that his mother was willing to have HJF in her home. Arnold stated that he violated his probation on two occasions. He maintained that he last used drugs and alcohol two years ago. Arnold stated that he first learned that he was HJF's father when he received a letter from the FIA when he was incarcerated in the county jail. Arnold stated that he could not contact the FIA because the FIA did not accept collect calls.

Wilson testified that she mailed a parent-agency agreement to Arnold at the address at which Fleming said he was residing. Wilson indicated that Arnold never contacted her by letter or telephone. She stated that her office accepted collect calls. Wilson stated that Fleming reported seeing Arnold in the community after HJF was born. Wilson testified that to her knowledge, Arnold had never visited HJF. Wilson stated that she sent letters to Arnold at the address she had for him, and that they were not returned to her office. Wilson stated that upon Arnold's release from prison he would be required to demonstrate that he could provide proper care and custody for HJF. Wilson estimated that that process would take approximately one year.

Over Arnold's objection, the trial court admitted his presentence report into evidence. Arnold testified that he never received any correspondence sent to his mother's address. He indicated that he was pursuing his GED in prison, and that he worked in the prison library.

Following these proofs, the trial court found that clear and convincing evidence existed to terminate Arnold's parental rights. The trial court noted that while the FIA had a duty to contact parents, parents also had a duty to make an effort to contact the agency to express a willingness to plan for a child. According to the trial court, the evidence showed that Arnold had not

contacted the FIA by mail or telephone. The trial court found that termination of Arnold's parental rights was in HJF's best interests. Arnold appeals of right.

II. Standard Of Review

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence.² This Court reviews the trial court's findings of fact for clear error.³ A finding is clearly erroneous when the reviewing court is left with the firm and definite conviction that a mistake was made.⁴ Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court shall order the termination of parental rights unless it finds from evidence on the whole record that termination is clearly not in the child's best interests.⁵ The trial court's decision regarding the child's best interests is reviewed for clear error.⁶

III. The Trial Court's Decision

A. Due Process

Arnold asserts that he was denied due process because he did not receive notice of the dispositional review hearings. A parent, the definition of which includes a father,⁷ is entitled to notice of a dispositional review hearing.⁸ Arnold did not acknowledge paternity of the child until he appeared at the permanent custody hearing, and thus prior to that date was not identified as the child's father.⁹ Arnold was then identified as the child's putative father, and received notice of the pending proceeding as required by MCR 5.921(D). The evidence showed that prior to the permanent custody hearing, the FIA made several efforts to contact Arnold. Further, Arnold was notified by publication of that hearing. We conclude that Arnold received all the notice due him prior to the permanent custody hearing and was not deprived of due process under the circumstances.

B. The Presentence Report

Arnold argues that the trial court abused its discretion by admitting the presentence report prepared for his latest conviction into evidence. The decision to admit evidence is within the discretion of the trial court.¹⁰ At a permanent custody hearing, all relevant and material evidence

² *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993).

³ MCR 5.974(I); *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

⁴ *Jackson*, *supra* at 25.

⁵ MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-354; 612 NW2d 407 (2000).

⁶ *Trejo*, *supra* at 356-357.

⁷ MCR 5.9903(A)(12).

⁸ MCR 5.921(B)(2)(c).

⁹ MCR 5.903(A)(4)(d).

¹⁰ *Price v Long Realty, Inc.*, 199 Mich App 461, 466; 502 NW2d 337 (1993).

may be received and relied on to the extent of its probative value, even if the evidence is not admissible at trial.¹¹ Arnold's criminal record and his history of drug usage were relevant to the issues of whether he could provide proper care and custody for the child and whether the child would be at risk in his custody. We conclude that the admission of the presentence report did not constitute an abuse of discretion.¹²

C. Clear And Convincing Evidence

We also conclude that the trial court did not clearly err in finding that the FIA established by clear and convincing evidence the existence of one or more statutory grounds for the termination of Arnold's parental rights. The FIA sought custody of the child after the child tested positive for cocaine at birth. At the permanent custody hearing Arnold acknowledged that he had never seen or provided support for the child.¹³ The trial court's finding that the FIA made reasonable efforts to contact Arnold but that he did not contact the FIA was not clearly erroneous.¹⁴ Arnold had no guarantee that he would be released from prison on any specific date. The evidence showed that upon his release from prison Arnold would be required to demonstrate that he could provide proper care and custody for the child. The FIA estimated that that process would take approximately one year. The evidence also showed that Arnold had no prospects for employment upon release and that he had a history of substance abuse.

We further conclude that the trial court did not clearly err in finding that termination of Arnold's parental rights was warranted on the grounds that the conditions that led to adjudication continued to exist and were not likely to be rectified within a reasonable time,¹⁵ that Arnold failed to provide proper care and custody for the child and could not be expected to do so within a reasonable time,¹⁶ and that it was reasonably likely that the child would be harmed if placed in Arnold's custody.¹⁷ The evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests.¹⁸

Affirmed.

/s/ William C. Whitbeck
/s/ Helene N. White
/s/ Pat M. Donofrio

¹¹ MCR 5.974(F)(2).

¹² *Price, supra* at 466; MCR 5.974(F)(2).

¹³ This testimony contradicted statements Arnold made in the presentence report.

¹⁴ *Sours, supra*.

¹⁵ MCL 712A.19b(3)(c)(i).

¹⁶ MCL 712A.19b(3)(g).

¹⁷ MCL 712A.19b(3)(j).

¹⁸ MCL 712A.19b(5); *Trejo, supra* at 353-354.